IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

S. B. CIVIL MISC. APPEAL NO. 24/2004

Hanuman v Nandram

Date of Judgment: 24th April 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Ashok Sharma, for the appellant.
Mr. B. L. Agarwal for the Respondent.

(Per Court):

A wall has literally and figuratively divided the neighbors in this case. The dispute over a wall, over two windows and a door has brought the parties before this court. The appellant is challenging the order dated 14-10-2003, passed by the Additional District Judge No. 2, Jaipur City, Jaipur, whereby the learned Judge has dismissed the appellant's application under Order 39, Rule 1A of the Civil Procedure Code (henceforth to be referred to as 'the Code', for short).

The facts, in a nutshell, are that both the appellant and the respondent are neighbors. The respondent before this

court, Nandram, had instituted a civil suit for permanent injunction and for demolishing of a wall which stood between the houses of the parties. The said suit was decreed in favor of Nandram on 17-12-1999. Therefore, the appellant filed an appeal against the said order before the District Judge, Jaipur City. Subsequently, the case was transferred to the court of Additional District Judge, No. 2, Jaipur City. On 27-1-2000, the learned Judge issued notice to Nandram and passed an interim order in favor of the appellant. Nandram was directed to maintain the status quo in the disputed property and the case was fixed for …..It is the appellant's case that the notice and the copy of the interim order were served on Nandram. On 15-2-2000, Nandram, along with his counsel, appeared in the court. The case was further fixed for 22-4-2000. However, according to the appellant, on 23-4-2000, Nandram tried to bread a window and a ventilator in the wall separating the two neighbors. When his son tried to protest, there was a scuffle between the families. His son informed the police, but the police did not take any effective measure against Nandram and his family members. Therefore, the appellant filed a contempt

petition against Nandram under Order 39, Rule 2A of the Code. In order to substantiate his case, the appellant produced three witnesses; Nandram also produced three witness in order to support his pleas. After considering the oral and documentary evidence, the learned Judge dismissed the contempt petition vide order dated 14-10-2003.

A bare perusal of the impugned order shows that the learned Judge has meticulously considered the evidence on record. According to the appellant himself, the suit related to the wall on the ground floor. The suit was decreed in favor of Nandram vide order dated 17-12-1999. It is not in doubt that the appellant preferred an appeal from the order dated 17-12-1999. The learned Judge granted an interim order in favor of the appellant with regard to the wall on the ground floor. Obviously, the said interim order did not relate to the wall on the first floor of the building. For, according to the appellant the wall on the first floor was not the matter of dispute. It has also come in evidence that the wall on the first floor already had a window and ventilator. Therefore, the learned Judge has rightly

concluded that the existence of the window and the ventilator was neither in dispute, nor was covered by the interim order dated 27-1-2000. Hence, the learned Judge has rightly concluded that Nandram has not violated the interim order dated 27-1-2000. We see no perversity or illegality in the impugned order.

In the result, there is no force in this appeal. It is, hereby, dismissed. There shall be no order as to costs.

R. S. Chauhan J.